

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554  
JAN 19 1993DISPATCHED BY  
FCC No. 92-275

In the Matter of

New Service Reporting Requirements  
Under Price Cap Regulation

## NOTICE OF PROPOSED RULEMAKING

Adopted: November 17, 1992; Released: January 19, 1993

Comment Date: March 12, 1993

Reply Comment Date: March 29, 1993

By the Commission:

## I. INTRODUCTION

1. By this Notice of Proposed Rulemaking (Notice), the Commission proposes to reduce the frequency with which price cap carriers must file certain reports regarding their offering of new interstate services.<sup>1</sup> Such carriers are currently required to file quarterly reports comparing actual results with their earlier projections. We tentatively conclude that this requirement should be modified to require annual rather than quarterly reports. We also propose to clarify the duration of this reporting requirement.

## II. DISCUSSION

2. For both AT&T and the local exchange carriers (LECs) subject to price cap regulation, rates for new services<sup>2</sup> must be supported by cost information that is prospective in nature.<sup>3</sup> While the tariff review process ensures that the forecasted cost and demand data are consistent internally and with forecasts for similar offerings, use of forecasted data makes it impossible to ensure that the supporting data are entirely accurate. The requirement that carriers report actual operating results serves several purposes. First, reporting allows us to determine if a carrier's

forecasts are consistently incorrect. If this proves to be the case, future new services demand forecasts could be adjusted. Second, public reports of operating results tend to encourage carriers to make more accurate demand forecasts. The knowledge that the Commission and interested parties can compare forecasts and results guards against inaccurate forecasting.

3. New services reports serve another purpose. Price cap regulation is intended to create incentives for carriers to be innovative in the provision of service. Reporting of new services gives the Commission some perspective on whether these services have satisfied customer needs. While demand information would ultimately become aggregated with similar information for other services in the actual price index and service category band index, isolation of operating results on a service-by-service basis helps determine if the incentives created by price cap regulation are producing services that customers want. This evaluation requires information that is highly disaggregated.

4. While the information contained in these quarterly reports is useful for these evaluation purposes, we tentatively conclude that annual reports that separately report on each new service would be equally useful and less of a burden on both carriers and the Commission. First, the purposes for which these data are collected, outlined above, can be served with an annual filing. Second, because new services typically build gradually to their long run level of demand, quarterly results during the first few quarters are of limited usefulness. Third, since the initial forecasts are for an annual period, it is more consistent to require monitoring on an annual basis. Finally, there would be a slight savings in resources for both the carriers and the Commission. We therefore propose to substitute an annual reporting requirement for the current quarterly obligation.

5. In addition, the *AT&T Price Cap Order* and the *LEC Price Cap Order* each made clear that the quarterly reporting obligation for a new service commenced six months after the initiation of that service, but the termination date of this reporting obligation is unclear.<sup>4</sup> To assure that we will continue to receive these reports for a reasonable period after these new services are introduced, we tentatively conclude that the obligation of price cap carriers to file these new service reports should terminate after the second annual report following the inclusion of the service in price cap indexes. Carriers would be required to file new service reports on the last day of the first calendar quarter, to include all new services introduced in the last calendar year. As stated above, reports would terminate

<sup>1</sup> In 1989, the American Telephone and Telegraph Company (AT&T) became subject to price cap regulation. Report and Order and Second Further Notice, 4 FCC Rcd 2873 (1989), and Erratum, 4 FCC Rcd 3379 (1989) (*AT&T Price Cap Order*), modified on recon. 6 FCC Rcd 665 (1991), appeal docketed, *AT&T v. FCC*, No. 91-1178 (D.C. Cir. April 15, 1991). In 1990, the largest local exchange carriers (LECs) also became subject to such regulation. Second Report and Order, 5 FCC Rcd 6786 (1990), and Erratum, 5 FCC Rcd 7664 (1990) (*LEC Price Cap Order*), modified on recon. 6 FCC Rcd 2637 (1991), petitions for recon. of ONA Part 69 Order pending, petitions for further recon. dismissed, 6 FCC Rcd 7482 (1991), further modified on recon., 6 FCC Rcd 4524 (1991) (*ONA Part 69 Order*), petitions for recon. of ONA Part 69 Order pending, appeal docketed, *D.C. PSC v. FCC*, No. 91-1279 (D.C. Cir. June 14, 1991).

<sup>2</sup> New services are subject to special rules under price cap regulation. See *AT&T Price Cap Order*, 4 FCC Rcd at 3122 (para. 518); *LEC Price Cap Order*, 5 FCC Rcd at 6824-25 (paras. 314-320). New services are offerings that enlarge the range of services available to customers (i.e., all existing service offerings remain available). Any service offering that only modifies a method of charging or provisioning a service but does not result in a net increase in the service options available to customers is defined as a restructured service. See, e.g., *LEC Price Cap Order*, 5 FCC Rcd at 6824 (para. 314).

<sup>3</sup> Sections 61.49(g) and (h) of the Commission's Rules, 47 C.F.R. §§61.49(g) and (h).

<sup>4</sup> See *AT&T Price Cap Order*, 4 FCC Rcd at 3127 (para. 528); *LEC Price Cap Order*, 5 FCC Rcd at 6825 (para. 321).

after the second annual report following the incorporation of the service into price cap indexes. Thus, new services would be subject to three annual reports.

6. We seek comment on these proposals and invite parties to submit alternative proposals.

### III. PROCEDURAL MATTERS

#### A. Ex Parte

7. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

#### B. Initial Regulatory Flexibility Analysis

8. We certify that the Regulatory Flexibility Act of 1980 does not apply to these proposed changes to the rules regarding new service reports by price cap carriers because such changes, if promulgated, would not have a significant economic impact on a substantial number of small business entities as defined by Section 601(3) of the Regulatory Flexibility Act. Carriers that would be affected by such changes generally are large corporations or affiliates of such corporations. The Secretary shall send a copy of this Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601, *et seq.*

#### C. Notice and Comment Provision

9. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 U.S.C. §§ 1.415 and 1.419, interested parties may file comments on whether the Commission should adopt the proposed changes in the reporting requirements for new services under price cap regulation on or before **March 12, 1993** and reply comments on or before **March 29, 1993**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting documents. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. Informal comments may be filed with the Chief, Common Carrier Bureau, Federal Communications Commission, Room 500, 1919 M Street, N.W., Washington, D.C. 20554. For further information, contact Allen A. Barna, Tariff Division, Common Carrier Bureau at (202) 632-6917.

### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4, 201-205, 218, and 403 of the Communications Act as amended, 47 U.S.C. §§ 151, 154, 201-205, 218, 220, and 403, a NOTICE OF PROPOSED RULEMAKING IS HEREBY PROVIDED as explained herein.

11. IT IS FURTHER ORDERED that, pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 U.S.C. §§ 1.415 and 1.419, comments SHALL BE FILED with the

Secretary, Federal Communications Commission, Washington, D.C. 20554, on or before **March 12, 1993** and reply comments SHALL BE FILED with the Secretary on or before **March 29, 1993**. In addition, parties should file two copies of any such pleadings with the Tariff Division, Common Carrier Bureau, Room 518, 1919 M Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with Downtown Copy Center, the Commission's duplicating contractor, at its office in Suite 640, 1990 M Street, N.W., Washington, D.C. 20036.

12. IT IS FURTHER ORDERED that the Secretary shall cause a summary of this Notice of Proposed Rulemaking to appear in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

*Donna R. Searcy*  
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Secretary *WFE*